Renting Homes (Wales) Bill – Special Edition

I am very pleased to have introduced the Welsh Government’s Renting Homes (Wales) Bill into the National Assembly for Wales.

Housing has an important influence on health, education prospects and employability, as well as affecting the communities in which we live. In recent years, the number of people renting their home has increased. One in three people in Wales (over 1 million in all) now live in a rented home.

For most people, renting their home works well, however, some encounter problems, many of which arise from the complexity of current law. For example, Housing Association tenants have very different rights to Local Authority tenants, and tenants of private landlords can be confronted with a completely different written contract when changing landlords. Some private landlords do not even provide a written contract, relying on a verbal agreement instead, which can lead to confusion and disputes.

I am committed to addressing these problems to achieve our goals of fairness and equality in our housing system. The Renting Homes (Wales) Bill is a very significant development. It sets out a single legal framework for renting a home from a Local Authority, Housing Association or private landlord. It will result in much greater clarity and consistency in the rights and responsibilities of those who rent their homes, whether as a tenant or a licensee, as well as the rights and responsibilities of landlords.

The Bill will also help victims of domestic abuse, targeting the perpetrators for eviction. It will also require landlords to ensure homes are fit for human habitation and will help protect occupiers against retaliatory eviction. The Bill makes it possible for young people to rent, enhances succession rights and establishes a legal framework for supported housing.

The Bill is grounded in the work of the Law Commission. The recommendations in its Renting Homes final report formed the basis of the Renting Homes White Paper, which was published in 2013. There was very strong support for our proposals and I want to thank everyone who responded to the White Paper and who have engaged with us since in other ways. Your contributions have informed the development of the Bill and I look forward to the continued participation of stakeholders as the Bill is scrutinised by the National Assembly for Wales.

Lesley Griffiths AM
Minister for Communities and Tackling Poverty
Making a Difference
The Welsh Government is committed to doing as much as possible to help people meet their housing needs. Our approach, which reflects core values of fairness, social justice, equality, and sustainable development, recognises the importance of safe, secure and affordable homes as the fabric of people’s lives and of strong communities.

Our role is to consider how the whole housing system works and to intervene where it is sensible and effective to do so. The law underpinning the relationship between landlords and those renting from them is a critical element of the housing system and its efficiency. There have been many calls to reform this aspect of housing law. These led to the Law Commission, which is the body responsible for proposing improvements to the law of England and Wales, carrying out a five-year programme of development and consultation.

Our Renting Homes (Wales) Bill builds on the Law Commission’s work. It sets out a new legal basis for renting, bringing much greater clarity and fairness. Instead of the current picture of complexity and confusion, all of the key rights and responsibilities

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of both landlords and tenants and licensees (termed “contract-holders” in the Bill) will be set out in a written statement of the rental contract. The Welsh Government will make model contracts freely available for landlords and contract-holders to use as the basis of their agreement. The greater consistency between contracts will also make it easier for people to seek help and advice. Furthermore, the Bill addresses significant inequalities and practical difficulties in how the law operates currently.

**Overview of the Renting Homes (Wales) Bill**

The Renting Homes (Wales) Bill is a significant piece of legislation. An Explanatory Memorandum, which can be accessed from the link below, has been published to convey information on the key elements of the Bill and its provisions.


The Bill sets out new arrangements for renting a home. It means, wherever possible, consistent terms will be used irrespective of whether the landlord is a Local Authority, Housing Association or private individual. This will allow important matters to be clearly understood by both landlord and contract-holder, reduce problems caused by a lack of understanding and make it easier for people to get advice on addressing any problems should they arise.

At the heart of the Bill are the new “occupation contracts”. With a limited number of exceptions, the Bill replaces all current tenancies and licences with just two types of occupation contract. An occupation contract will be one of two main types:

- **Secure contract** - modelled on the current secure tenancy issued by Local Authorities.
- **Standard contract** - modelled on the current assured shorthold tenancy used mainly in the private rented sector. A standard contract can be either “periodic”, typically running from week to week or month to month, or “fixed term”, running for a pre-agreed set period, usually a number of months or years.

A written contract is not currently required as part of a tenancy or licence. Where written contracts are issued, these can vary hugely from property to property and from landlord to landlord. Contracts can be ambiguous, difficult to understand, or contain unlawful terms. The Renting Homes (Wales) Bill requires all home rentals to be underpinned by a written statement containing all of the essential information relevant to both parties.

Currently, there is often confusion over the legal basis under which someone rents their home. Sometimes, landlords will say they are issuing a “licence” rather than a “tenancy” because they believe this gives them more control, whereas in law a tenancy will have been created, irrespective of what title is used in the agreement. The occupation contracts created under the Bill will apply to both tenancies and licences, providing certain requirements are met. This is also why, instead of the
terms “tenant” or “licensee”, the Bill refers to “contract-holder”. This allows for the fact that some contract-holders will be tenants while others will be licensees.

The default occupation contract issued by Local Authorities and Housing Associations registered to provide social housing, termed “community landlords” under the Bill, will be the secure contract. The default contract issued by private landlords, which under the Bill are all landlords other than community landlords, will be the standard contract.

Each occupation contract comprises three elements:

- **Key Matters** - the dwelling, occupation date, rent, and rental period;
- **Fundamental Terms** - the primary rights and responsibilities under the contract set out as fundamental provisions in the Bill; and
- **Supplementary Terms** - further rights and responsibilities under the contract which will be set out in regulations to be made by the Welsh Ministers.

There is potentially a fourth element, namely any “**Additional Terms**” which the landlord and contract-holder may agree.

**Benefits**

The new arrangements will bring a number of benefits, including:

- Requiring all landlords to issue written statements of contracts containing all relevant terms.
- Standardising eviction for serious rent arrears from social housing in line with the current position for Local Authorities.
- Providing greater flexibility to rent for less than six months within the private sector and encouraging landlords to rent to those they see as high risk.
- Including as a term of all contracts the landlord’s duty to maintain the dwelling.
- Requiring the landlord to ensure the dwelling is fit for human habitation.
- Protection from retaliatory eviction.
- Making it easier for people to join or leave joint rental contracts.
- Dealing more effectively with domestic abuse and the anti-social behaviour of some households by including a ‘prohibited conduct’ term in every contract.
- Making it possible for young people to rent in their own right.
- Making it easier for landlords to recover abandoned properties.
- Standardising the right to take over a contract when the current contract-holder dies, and giving a new right to long-term resident carers.
- Providing a legal framework for supported accommodation housing the most vulnerable individuals.
- Reducing costs by having a simpler legal framework with model contracts.

Figure [1] below shows how occupation contracts will operate within the current system of licences and tenancies.
Figure 1. The Renting Homes (Wales) Bill - Overview

Existing Tenancy Types

Secure Tenancies
(Issued by Local Housing Authorities – Housing Acts 1985 and 1996)

Assured Tenancies
(Issued by Registered Social Landlords (RSLs) – Housing Act 1988)

Introductory Tenancies
(Issued by Local Housing Authorities – Housing Act 1996)

Demoted Tenancies
(Issued by Local Housing Authorities and Registered Social Landlords – introduced by Anti-Social Behaviour Act 2003)

Assured Shorthold Tenancies
(Issued by private landlords – Housing Act 1988)

Other Private Tenancies & Licences
(Issued by private landlords)

Renting Homes Occupation Contracts

Secure Contracts
(Social housing – Community Landlords)
(Private landlords – power to issue)

Standard Contracts
(Housing – Private landlords)
(Introductory Standard Contracts and (Prohibited Conduct Standard Contracts – Community landlords)

Terms, Matters and Model Contracts

Key matters (rent / property etc.)

Fundamental terms (Renting Homes Bill)

Supplementary terms (Regulations)

Additional terms (parties’ negotiation)

Model Contracts
Key Features of the Bill

The information in the following pages sets out the key features of the Bill. More information can be found in the Bill’s Explanatory Memorandum and Regulatory Impact Assessment, which can be accessed via the link below.

[DN: insert link to EM here]

Duty to provide a written statement of contract

A clear, understandable, contract is essential to effective arrangements for renting a home. Both the landlord and contract-holder must have access to a written contract in order to understand their rights and responsibilities. The Bill will require a landlord to provide the contract-holder with a written statement of the contract no later than two weeks from the date of occupation. Most landlords will, no doubt, continue to issue a written contract for signature before the contract-holder moves in. The two-week period is to allow for situations, for example, where accommodation is provided at very short notice. This will ensure every person renting a home receives a written statement of the contract.

Ending a contract

The process and circumstances by which current tenancies and licences are ended by a landlord, or indeed a tenant or licensee, are many and varied. The ending of a contract is perhaps one of the most confusing parts of current arrangements. It is the cause of the majority of court actions, and is always likely to be under the current system. It can involve time, expense, and worry on the part of both parties to the rental agreement. The Bill therefore sets out clear, straightforward and fair processes for ending a contract, which reflect several, significant changes to current law. In doing so, the Bill aims to clarify rights and responsibilities and thus reduce the number of disputes and court actions.

Repossession by the landlord

The Bill will make changes to the processes and criteria currently used when a landlord seeks possession of the dwelling. It replaces the long list of grounds for possession under current law with terms in the contract itself. The purpose is to ensure both contract-holder and landlord are very clear from the outset of the circumstances under which the dwelling can be repossessed.

The Bill will considerably simplify the current arrangements, which will aid understanding. There will be only six grounds for possession:

- Breach of contract;
- Contract-holder’s notice;
- Landlord’s notice under a periodic standard contract;
- Landlord’s notice under a fixed term standard contract;
- Serious rent arrears under a standard contract; and
- Estate management grounds.

As is the case now, the new grounds are either “discretionary” or “absolute”, referring to whether the court has discretion to issue a possession order or, if certain conditions are satisfied, is required by law to do so. In most cases, the grounds for possession under the Bill will be discretionary.

“Ground 8” proceedings for possession

Where included as a term in the contract, a Housing Association is currently able to seek possession against an assured tenant whose rent is in arrears, for example by eight weeks where rent is paid weekly or fortnightly, or two months, where rent is payable monthly. If a case is taken to court, and is proved, the court must grant an order for possession to the landlord. The court is not able to take into consideration factors which may have contributed to the rent arrears, for example the non-payment of housing benefit due to an error or lengthy processing times. This is known as “Ground 8”, as it is listed as such in Schedule 2 to the Housing Act 1988. In practice, very little use is made of Ground 8. In 2010-11, only 17 of 1,340 possession orders made for rent arrears in respect of Housing Association assured tenancies were on this ground; just over one in every hundred.

The secure contract will not include an equivalent to Ground 8, and therefore housing provided under the contract will not be subject to an absolute ground for possession for rent arrears. Because Ground 8 does not apply at all to Local Authority secure tenants currently, the Bill will make an important contribution to achieving equality in the provision of social housing.

The “six-month moratorium”

Under current law, a possession order issued by a court on the landlord’s “no-fault” notice ground under section 21 of the Housing Act 1988 cannot take effect within the first six months of an assured shorthold tenancy. This is known as the “six-month moratorium”. However, in the vast majority of cases the moratorium is irrelevant because private landlords require tenants to sign up for an initial fixed term of six or twelve months, under which a “no-fault” notice for possession cannot be issued.

Standard contracts in the Bill do not include such a moratorium. The purpose behind its exclusion is to provide additional flexibility to help people who rent their home in certain circumstances, for example where someone’s home is provided as part of their employment. It will also encourage landlords to rent to those they are currently reluctant to rent to because of the moratorium, for example someone with a poor renting history. Furthermore, it will make it easier for someone to find somewhere to rent for a period of less than six months, for example on moving to an area for work or education purposes.

Landlords generally want to keep their tenants for as long as possible, and want the security of income provided by an initial fixed term of six or twelve months. Therefore, there is nothing to suggest removing the moratorium will cause landlords to alter their letting practices overall. However, removing the moratorium will provide
additional flexibility to help meet peoples' housing needs under specific circumstances.

**Repairs and maintenance**

The obligations for repair and maintenance of a rented dwelling can be a source of confusion for landlord and tenant and, often, the cause of disputes. The Bill reflects current obligations but, by requiring the landlord’s repairing obligations to be included in the occupation contract, the Bill will help ensure both parties are aware of these responsibilities.

**Fitness for human habitation**

The Renting Homes White Paper proposals included requiring a landlord to ensure there are no Housing Health and Safety Rating System Category 1 hazards in the dwelling. Whilst stakeholder responses to the White Paper supported the approach in principle, concerns were raised as to how this would work in practice. These included a concern regarding Local Authorities being able to carry out the inspections entailed for it to work.

The Bill adopts an alternative approach which removes the reliance on Local Authority inspections but nevertheless reflects the Welsh Government’s commitment to improving the condition of rented properties and, more importantly, the health and well-being of those who live in them. The Bill requires the landlord to ensure the dwelling is fit for human habitation for the duration of the contract. The Bill also includes a power to make regulations which will be the basis for establishing whether a dwelling is fit for human habitation. These may be by reference to regulations made in relation to Category 1 or Category 2 hazards, made under section 2 of the Housing Act 2004.

**Retaliatory eviction**

Most private landlords are responsible and maintain their properties in line with their obligations. However, a minority do not take their obligations as seriously. Rather than deal with repairs requested by the tenant, such landlords retaliate by evicting the tenant using the “no fault” ground under section 21 of Housing Act 1988. Retaliatory eviction is not just a problem for occupiers; it also damages the image of the private rented sector and tenant confidence more generally.

The Bill introduces fairness by limiting landlords’ ability to use the “no-fault” notice ground to escape their obligations for repairs or to ensure fitness for human habitation. Where the court is satisfied the landlord has not complied with his or her obligations, and the landlord has issued the “no-fault” possession claim to avoid complying with those obligations, it may treat the possession claim as discretionary and therefore may refuse to make an order for possession.

**Joint contracts**
The Bill takes a new approach to the often problematic issue of joint contracts. The current law around what happens to a tenancy when one of the tenants leaves is unhelpfully rigid. At present, one joint tenant can, often unintentionally, bring the tenancy to an end by serving a notice to quit, therefore ending it for every joint tenant. This can result in unintentional homelessness for the other joint tenants.

The Bill’s broad approach on joint contracts is, wherever possible, to treat each joint contract-holder as an individual. The Bill therefore allows a joint contract-holder to withdraw from an occupation contract, without ending the whole contract. Likewise, the Bill enables a joint contract-holder to be excluded from a contract on prohibited conduct grounds, or to be removed by the court, without this affecting the other contract-holder(s). The purpose behind this is to prevent the actions of one tenant adversely affecting the interests of others. This more flexible approach to joint contracts will also enable a more targeted approach to dealing with anti-social behaviour and domestic abuse.

**Prohibited conduct**

Issues such as anti-social behaviour and domestic abuse have a significant impact on the lives of individuals and communities, affecting people’s safety, their health and well-being and their overall quality of life. While some rental agreements include restrictions on behaviour, such as playing loud music, they are varied and inconsistent. The Bill will make a “prohibited conduct term” a mandatory requirement in all occupation contracts. The prohibited conduct term sets out the types of behaviour, whether committed or threatened, which would result in a breach of the contract. In summary, these are:

- Conduct capable of causing nuisance or annoyance to a person living in the dwelling or in the locality;
- Conduct capable of causing nuisance or annoyance to a person engaged in lawful activity in the dwelling or in the locality;
- Conduct capable of causing nuisance or annoyance to the landlord or a person acting for the landlord in carrying out the landlord’s housing management functions;
- Using the dwelling for criminal purposes; and
- To allow, incite or encourage another person to behave in the ways described above.

Breaching the term may trigger possession action in the normal way, although court proceedings can start on the same day the landlord gives notice. This is necessary where the landlord has to deal with a serious breach. Of course, encouraging contract-holders to improve their behaviour is preferable to eviction. Similarly to current arrangements, the Bill allows a landlord to seek an order from the court imposing a standard contract in place of a secure contract for a 12 month probation period, which is extendable to 18 months.

Domestic abuse also falls within the scope of the prohibited conduct term. The Welsh Government is committed to doing more to help the victims of domestic abuse. The policy is to prevent domestic abuse in the first place but, if it does occur,
it is important victims receive the help they need. One of the problems with the current law on joint tenancies is it often results in the victim of abuse having to end his or her tenancy in order for the landlord to evict the perpetrator. The more flexible approach to joint contracts under the Bill will enable only the perpetrator of domestic abuse to be evicted. This would allow the victim and any children to stay in their home.

Contracts for 16 and 17 year olds

The current law means a person has to be at least 18 to hold a tenancy in his or her own right. This causes difficulties, for example, for Local Authorities in providing accommodation to this age group. The Bill provides 16 or 17 year olds with the same right to an occupation contract as those aged 18 and over. In doing so, the Bill does not remove any existing rights of 16 and 17 year olds, nor any obligation a local authority may have to them under existing legislation and the new homelessness legislation which will come into effect through the Housing (Wales) Act 2014.

Abandonment

A long standing issue for landlords is abandonment, which is where a tenant disappears, often owing rent and possibly having damaged the dwelling. Where it is clear a dwelling has been abandoned, the Bill will enable a landlord to repossess the dwelling without requiring a possession order from the court. This procedure will enable abandoned properties to be re-let more quickly, which is in everyone’s interest.

The Bill has a number of safeguards for the contract-holder. In order to regain possession, a landlord must give the contract-holder a written warning notice stating the dwelling is believed to be abandoned (this may be done by leaving it or posting it to the address). During the four-week warning period, the landlord must make such inquiries as necessary to be satisfied the dwelling is abandoned. At the end of the warning period, the landlord may end the contract by issuing a further notice and take possession of the dwelling immediately. If the contract-holder re-appears within six months, an application can be made to the court to re-instate the contract, among other remedies.

Succession rights and transfer

Succession rights have become increasingly complex under current housing law. The Bill provides a single framework of succession rights which will apply to all occupation contracts. In doing so, the Bill enhances current succession rights to family members and provides a new succession right to voluntary carers.

In summary, the Bill allows for one ‘priority successor’ (spouse or civil partner, or person living with the contract-holder as though they were their spouse or civil partner) followed by potential ‘reserve successor’ (specified family member or carer). In the case of a carer or family member other than a spouse, a reserve successor must have lived in the dwelling for at least 12 months.
The Bill also makes changes to the way a contract-holder can transfer his or her contract to someone else. This will allow for greater flexibility, for example in the arrangements under which contract-holders of secure contracts exchange properties.

**Deposit schemes**

The Bill allows for the adoption of a similar approach to protecting deposits to that set out in current legislation, but extends the requirement to all contracts where a deposit is taken (current requirements apply only to assured shorthold tenancies). All deposits must be protected by the landlord through an authorised deposit scheme, as is currently the case.

**Supported housing**

There are many types of supported housing, under which homes are provided to some of the most vulnerable people. The Bill establishes, for the first time, a legal framework which recognises the specific needs of supported housing.

The Bill requires supported housing providers to issue a “supported standard contract” after a period of occupation of six months (though the initial six-month period may be extended on application to the Local Authority). A “supported standard contract” is the same as a standard contract, but provides the landlord with two additional powers:

- **Temporary exclusion** – under which the landlord is able to require the contract-holder to leave the accommodation for up to 48 hours, for a maximum of three times in any six-month period; and

- **Mobility** – under which the landlord can re-locate an individual within a building, perhaps to separate two residents who are in conflict.

**Contract conversion**

Subject to some specific exceptions, the Bill provides for all existing residential tenancies and licences to convert to the appropriate occupation contract on a date to be appointed by the Welsh Ministers. Terms in any existing tenancy or licence, which do not conflict with the relevant fundamental terms, will continue to have effect under the converted occupation contract. For converted contracts, a period of six months will be allowed for the issuing of the written statement of the contract. This will enable the issuing of contracts to be incorporated into the usual engagement between landlord and tenant.

New tenancies or licenses issued on or after this date will take the form of an occupation contract, and contract-holders will be entitled to a written statement of their contract after two weeks of the date of conversion.
For converted contracts, a period of six months will be allowed for the issuing of written statements of contract. This will also allow for the issuing of contracts to be incorporated into the ongoing engagement between landlord and tenant.

Next Steps

Following introduction, the Renting Homes (Wales) Bill will be considered by the National Assembly for Wales. The legislative process, where the Bill is scrutinised by Assembly Members, comprises four stages.

The first stage involves consideration by the Communities, Equality and Local Government Committee, the Constitutional and Legislative Affairs Committee, and the Finance Committee (http://www.senedd.assembly.wales/mgCommitteeDetails.aspx?ID=226) of the National Assembly for Wales. Comments on the Bill from stakeholders will be invited, either in writing or in person.

Subsequent stages involve consideration by Assembly Members sitting in Committees or then Plenary sessions involving all Members. These stages offer opportunities for the Bill to be considered in detail and for amendments to be put forward. The amendments are then voted upon at each individual stage. If the Bill passes all its stages, it will proceed to Royal Assent. Commencement of the various provisions, including the regulation-making powers relating to supplementary terms, will take place after Royal Assent.

Further Reading